

## LEGISLATIVE BILL 763

Approved by the Governor April 1, 2010

Introduced by Mello, 5; Coash, 27; Cornett, 45; Flood, 19; Lautenbaugh, 18; McGill, 26; Rogert, 16; Council, 11; Christensen, 44.

FOR AN ACT relating to asbestos-related liabilities; to adopt the Successor Asbestos-Related Liability Act.

Be it enacted by the people of the State of Nebraska,

Section 1. Sections 1 to 7 of this act shall be known and may be cited as the Successor Asbestos-Related Liability Act.

Sec. 2. For purposes of the Successor Asbestos-Related Liability Act:

(1) Asbestos claim means any claim, wherever or whenever made, for damages, losses, indemnification, contribution, or other relief arising out of, based on, or in any way related to asbestos, including:

(a) Any claim involving the health effects of exposure to asbestos, including a claim for personal injury or death, mental or emotional injury, risk of disease or other injury, or the costs of medical monitoring or surveillance;

(b) Any claim made by or on behalf of any person exposed to asbestos, or a representative, spouse, parent, child, or other relative of the person; and

(c) Any claim for damage or loss caused by the installation, presence, or removal of asbestos;

(2) Corporation means a corporation for profit, including a domestic corporation organized under the laws of this state or a foreign corporation organized under laws other than the laws of this state;

(3) Successor asbestos-related liabilities means liabilities, whether known or unknown, asserted or unasserted, absolute or contingent, accrued or unaccrued, liquidated or unliquidated, or due or to become due, that are related to asbestos claims and were assumed or incurred by a corporation as a result of or in connection with a merger or consolidation, or the plan of merger or consolidation related to the merger or consolidation with or into another corporation, or that are related in any way to asbestos claims based on the exercise of control or the ownership of stock of the corporation before the merger or consolidation. Successor asbestos-related liabilities includes liabilities that, after the time of the merger or consolidation for which the fair market value of total gross assets is determined under section 5 of this act, were or are paid or otherwise discharged, or committed to be paid or otherwise discharged, by or on behalf of the corporation, or by a successor corporation, or by or on behalf of a transferor, in connection with settlements, judgments, or other discharges in this state or another jurisdiction;

(4) Successor corporation means a corporation that assumes or incurs or has assumed or incurred successor asbestos-related liabilities that is a successor and became a successor before January 1, 1972, or is any of that successor corporation's successors; and

(5) Transferor means a corporation from which successor asbestos-related liabilities are or were assumed or incurred.

Sec. 3. (1) The limitations in section 4 of this act shall apply to any successor corporation.

(2) The limitations in section 4 of this act shall not apply to:

(a) Workers' compensation benefits paid by or on behalf of an employer to an employee under the Nebraska Workers' Compensation Act or a comparable workers' compensation law of another jurisdiction;

(b) Any claim against a successor corporation that does not constitute a successor asbestos-related liability;

(c) Any obligation under the National Labor Relations Act, 29 U.S.C. 151, et seq., as amended, or under any collective-bargaining agreement; or

(d) A successor corporation that, after a merger or consolidation, continued in the business of mining asbestos or in the business of selling or distributing asbestos fibers or in the business of manufacturing, distributing, removing, or installing asbestos-containing products which were the same or substantially the same as those products previously manufactured, distributed, removed, or installed by the transferor.

Sec. 4. (1) Except as further limited in subsection (2) of this section, the cumulative successor asbestos-related liabilities of a successor corporation are limited to the fair market value of the total gross assets of the transferor determined as of the time of the merger or

consolidation. The successor corporation does not have responsibility for successor asbestos-related liabilities in excess of this limitation.

(2) If the transferor had assumed or incurred successor asbestos-related liabilities in connection with a prior merger or consolidation with a prior transferor, then the fair market value of the total gross assets of the prior transferor determined as of the time of the earlier merger or consolidation shall be substituted for the limitation in subsection (1) of this section for purposes of determining the limitation of liability of a successor corporation.

Sec. 5. (1) A successor corporation may establish the fair market value of total gross assets for the purpose of the limitations under section 4 of this act through any method reasonable under the circumstances, including:

(a) By reference to the going concern value of the assets or to the purchase price attributable to or paid for the assets in an arms-length transaction; or

(b) In the absence of other readily available information from which the fair market value can be determined, by reference to the value of the assets recorded on a balance sheet.

(2) Total gross assets include intangible assets.

(3) To the extent total gross assets include any liability insurance that was issued to the transferor whose assets are being valued for purposes of this section, the applicability, terms, conditions, and limits of such insurance shall not be affected by this section, nor shall this section otherwise affect the rights and obligations of an insurer, transferor, or successor corporation under any insurance contract or any related agreements, including, without limitation, preenactment settlements resolving coverage-related disputes and the rights of an insurer to seek payment for applicable deductibles, retrospective premiums, or self-insured retentions or to seek contribution from a successor corporation for uninsured or self-insured periods or periods when insurance is uncollectible or otherwise unavailable. Without limiting the foregoing, to the extent total gross assets include such liability insurance, a settlement of a dispute concerning any such liability insurance coverage entered into by a transferor or successor corporation with the insurers of the transferor before the effective date of this act shall be determinative of the total coverage of such liability insurance to be included in the calculation of the transferor's total gross assets.

Sec. 6. (1) Except as provided in subsections (2) through (4) of this section, the fair market value of total gross assets at the time of the merger or consolidation shall increase annually at a rate equal to the sum of:

(a) The prime rate as listed in the first edition of the Wall Street Journal published for each calendar year since the merger or consolidation, unless the prime rate is not published in that edition of the Wall Street Journal, in which case any reasonable determination of the prime rate on the first day of the year may be used; and

(b) One percent.

(2) The rate found in subsection (1) of this section shall not be compounded.

(3) The adjustment of the fair market value of total gross assets shall continue as provided in subsection (1) of this section until the date the adjusted value is first exceeded by the cumulative amounts of successor asbestos-related liabilities paid or committed to be paid by or on behalf of the successor corporation or a predecessor or by or on behalf of a transferor after the time of the merger or consolidation for which the fair market value of total gross assets is being determined.

(4) No adjustment of the fair market value of total gross assets shall be applied to any liability insurance that is included in total gross assets under subsection (3) of section 5 of this act.

Sec. 7. (1) The courts of this state shall construe the provisions of the Successor Asbestos-Related Liability Act liberally with regard to successor corporations.

(2) The act shall apply to all asbestos claims filed against a successor corporation on or after the effective date of this act. The act also shall apply to any pending asbestos claims against a successor corporation in which trial has not commenced as of the effective date of this act, except that any provisions of the act which would be unconstitutional if applied retroactively shall be applied prospectively only.